

Regulation 39-26-601(3) Definitions – "State fiscal year" means every twelve month period commencing 12:00 a.m. July 1 of one calendar year and ending 11:59 p.m. June 30 of the following calendar year. The fiscal year is designated as the fiscal year number of the June 30 year. Thus June 30, 1999 is the last day of the 1999 fiscal year, and June 30, 2000 is the last day of the 2000 fiscal year.

Regulation 39-26-602 SALES AND USE TAX REFUND FOR STATE SALES OR USE TAX PAID ON RESEARCH AND DEVELOPMENT PROPERTY.

(1) Research and Development Property Refund

(a) The refund of state sales and use tax pursuant to section 39-26-602 is 100% of the state sales and use tax paid on such property in any qualifying fiscal year. No local or district sales or use taxes are refundable.

(b) The refund of state sales and use tax pursuant to section 39-26-602, C.R.S. is available in any given tax year only if state revenues exceed the limitation on state fiscal year spending by the amounts established in section 39-26-602(6). Each October of each year, the state will certify if there are excess revenues in the immediately preceding fiscal year. See regulation 39-22-120 for years in which the refund is available.

(2) Identification of Purchase Within the Refund Period – Election of Method.

This refund program does not apply to any purchases made prior to July 1, 2002. Only purchases made in a qualifying state fiscal year qualify for refund. The program is first available for state fiscal year beginning on July 1, 2002 and ending June 30, 2003. That year will be qualified or disqualified when fiscal year 2003 revenues are known on or about October 1, 2003 and when ballot initiatives are considered for the November 2003 election.

There may be future fiscal years that do not qualify for the refund, surrounded by fiscal years that do qualify for the refund. This requires taxpayers to use a consistent method from year to year to define sales, purchase, storage, use or consumption (collectively referred to herein as the "purchase") to which the refund applies. The taxpayer is responsible to keep and maintain the records necessary to document all the refund claimed, including documentation to show that the appropriate optional method was used. Taxpayers who make no specific elections must use method (a). Taxpayers may use one of the methods below, or may use one method for expense items and another method for capital items. The taxpayer may elect option (b) for all or some category of expenditures, but must continue this method for three fiscal years or until after a non-refund eligible fiscal year has passed.

(a) **INVOICE DATE METHOD.** The primary indicator of whether the purchase qualifies as being within the fiscal year shall be the invoice date. For example, qualifying invoices dated on or after July 1, 2002 but before July 1, 2003 are eligible for the refund claim filed on or after January 1, 2004 but before April 1, 2004. The invoice date method

will not include any purchase in a year for an invoice that is merely the acceptance of an order and where the actual shipping date is within a later fiscal year.

(b) DELIVERY DATE OF GOODS METHOD. The taxpayer may elect this method for all purchases over a dollar amount threshold set by the taxpayer. This dollar amount must be announced by the taxpayer with the first refund claim filed using this method. The taxpayer electing this method must continue this election, with the same amount used as the threshold, for three fiscal years or until after a non-refund eligible fiscal year has passed. Where the delivery date method is elected the taxpayer must document delivery receipt dates for all qualifying purchases greater than the dollar amount selected. If documentation of delivery date is not maintained this method will be denied and the invoice date method imposed.

(c) OTHER METHODS. Other methods may be allowed, where authorized prior to filing the first refund claim using such methods, where the taxpayer assumes complete burden of providing proof as required by the terms of the proposed method and where accepted by the delegate of the Executive Director.

(3) Refund Form. Refunds shall be filed on the Claim for Refund, Form 4137 and contain all the information required by that form. The refund period is the July 1 through June 30 fiscal year for which a qualified surplus exists. Claims may not be filed before the following January 1, and may not be filed after the following April 1. If April 1 falls on a Saturday, Sunday or holiday, the following business day shall be the last day for filing a claim. No extension of the filing period deadline of April 1 is provided in the statute so no extension will be granted. Claims filed after April 1 of the filing year will be denied in full. See 39-21-119, C.R.S. for filing rules. Refund claims should isolate the state sales or use tax component of any tax paid on purchases from other sales tax amounts of other taxing jurisdictions.

(4) Refund Claim Documentation. Qualifying as Research and Development Property. Identify amounts claimed by expense account charged or capital project, as appropriate to the particular claim:

(a) If one project is the subject a claim, provide certification or description of the project or equipment purpose and use. Identify which part of section 39-26-601(2) C.R.S. is applicable to qualify the equipment as exempt pollution control equipment.

(b) For refund claims with more than one qualifying project, provide the description of projects, description of each major components function as a research and development device. Identify by project which part of section 39-26-601(3) C.R.S. is applicable to qualify the project as exempt. This information may be provided by assigning an alphanumeric code for each category of research and development, a translation key for the code, and use of the code on invoices or on each entry of a spreadsheet.

(5) Refund Claim Documentation. Verification of equipment and tax paid.

(a) For refund claims under \$500 or with under 20 invoices, attach copies of the invoices and indicate qualification type on invoices or explanation sheet. If consumer use tax was paid, indicate the account number and month of remittance.

(b) For claims over \$500 and with more than twenty purchase invoices, provide on paper a columnar worksheets or print outs with each line listing an equipment item and the invoice or delivery date, vendor name, expense category, project or type of asset, item price subject to sales or use tax, total sales tax paid, total state sales tax paid and total state use tax paid.

(c) Where appropriate:

- Provide copies of the ten largest invoices and all invoices that reflect a state sales tax paid of more than \$5,000.
- Provide Colorado account number under which use tax was paid, if applicable.
- For all equipment purchases within one fiscal year a single vendor has collected more than \$1,000 of Colorado sales tax for which a refund is claimed, provide a listing of the vendor name, address for IRS W-9 purposes and Internal Revenue Service Taxpayer Identification Number (TIN) assigned to that taxpayer.
- Provide the relevant portion of the business chart of accounts

(6) Research and Development Property Sales and Use Tax Refund Subject to Audit. Refunds issued under this part shall be subject to audit review by the agents of the Executive Director. When a refund of tax is issued, there has been no state sales or use tax paid on that purchase. If a refund amount is determined to be invalid the sales tax or use tax will be assessed as an unpaid tax liability any time within the statutory assessment period as applicable under section 39-21-107 or other statutes as may apply. Penalties, interest and officer liability shall apply from the date of refund, exactly as to other unpaid sales or use taxes. Refunds may also be reclaimed under section 13-80-101(1)(m), C.R.S.